

MT LEGISLATIVE HISTORY

Chapter 11 19 75

Bill H (38) S _____

Original bill & hist. ___C

H. Committee on Lab. & Emp. Rel.

S. Committee on Lab. & Emp. Rel.

Hearing Date(s) _____ C

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____

Report _____

Handwritten: 218, 39, Magone, Johnston, Lynch, Sullivan, Miller, Harper, McArthur, Kibbey, Menahan, B. Kelly, Dussard, Suckeck, Murphy, Barth, Conroy, Luster, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

1 BILL NO. 39
 2 INTRODUCED BY *MAGONE*
 3 *Harper* *McArthur* *Kibbey* *Menahan* *B. Kelly* *Dussard* *Suckeck*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION

5 92-715, R.C.M. 1947, TO REMOVE THE TWO PERCENT (2%) DISCOUNT
 6 ON LUMP SUM SETTLEMENTS IN WORKMEN'S COMPENSATION CASES."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 92-715, R.C.M. 1947, is amended to
 10 read as follows:

11 "92-715. Biweekly payments converted into a lump sum.
 12 The biweekly payments provided for in this act may be
 13 converted, in whole or in part, into a lump-sum payment,
 14 ~~which--lump-sum-payment-shall-not-exceed-the-estimated-value~~
 15 ~~of-the-present-worth-of-the-deferred-payments-capitalized-at~~
 16 ~~the-rate-of-two-per-centum-(2%)-per-annum.~~ Such conversion
 17 can only be made upon the written application of the injured
 18 workman, his beneficiary, or major or minor dependents, as
 19 the case may be, and shall rest in the discretion of the
 20 board division, both as to the amount of such lump-sum
 21 payment and the advisability of such conversion. The board
 22 division is hereby vested with full power, authority, and
 23 jurisdiction to compromise claims and to approve compromises
 24 of claims under this act; and all settlements and
 25 compromises of compensation provided in this act shall be

1 absolutely null and void without the approval of the board
 2 division. Any approval of the board division must be in
 3 writing and set forth specifically the reasons for such
 4 lump-sum or compromise payment."

-End-

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 3, 1975

The seventh meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members were present with Senator Etchart excused.

CONSIDERATION OF HOUSE BILL 39: Representative Mular appeared before the committee to introduce this bill. This bill eliminates the present 2% worth adjustment on lump-sum settlements. This is like a sales tax on lump-sum payments. (See attached Memorandum.)

Norman Grosfield, of the Division of Workmen's Compensation, appeared in support of this bill. In the law, if someone applies for a lump-sum settlement, the law requires a 2% discount be taken. It is significant that an injured man, in this day and age, receive all the money he can. This 2% adjustment is very insignificant. Private insurers and Plan 1 insurers waive this fee.

Ernie Post, of the Montana AFL-CIO, appeared in support of HB 39. This 2% is deducted from the claimants award. He also stated that in these times it is important to an injured worker to be awarded his total claim. This is discriminatory against Plan 3 carriers because Plan 1 and Plan 2 carriers waive this charge.

CONSIDERATION OF HOUSE BILL 9: Representative Stoltz appeared before the committee to introduce this bill. HB 9 is a result of the Interim Committee on equal rights of the sexes. HB 9 deals with maternity leave, under the law it is unlawful to terminate a woman's employment because of her pregnancy. She must be reinstated with full pay and benefits. It is also unlawful to require an employee to take a mandatory maternity leave for a ridiculous length of time. If these rights are violated a person may file a complaint with the commissioner of labor.

Ernie Post, of the Montana AFL-CIO, appeared in support of HB 9. He began his testimony by quoting the Title VII of the 1964 Civil Rights Act "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin;". Mr. Post then cited a few court cases that dealt with sex discrimination. (See attachments.) In many organizations, if a man is employed, his wife is covered in the case of pregnancy. It is only fair that if the woman is employed she should also be covered for herself. This coverage should work out of the trust fund which would take the burden off the group plans.

Don Judge, of the AFSCME AFL-CIO, appeared in support of HB 9. Mr. Judge supported HB 9 because of the public employees. Public employees are traditionally under paid, and for this reason it is almost necessary for both the man and the wife to work. This fact is a type of mandatory birth control and every one should have the

At this point Representative Stoltz asked Ernie Post to answer a few of the questions posed by the opponents. Ernie Post, of the AFL-CIO, stated that the important thing that should be done is to look at the Supreme Court decisions in 1974. (See attached.) It is surprising that small employers are putting in to not have to pay unemployment at all. All employers pay into this fund. At this point Mr. Post suggested that before any decision is made on this bill Mr. Fred Barrett, of the Employment and Security Council Division, be called in to answer some of the questions.

Discussion was then held by the committee. At this time Senator Norman asked if there would be any objection by Representative Stoltz if the bill were amended to include paternity leave. There is a time when the father has been through alot of mental strain and has to share in the responsibility of taking care of the new child. Representative Stoltz said she had no objection and that this point had been brought up before.

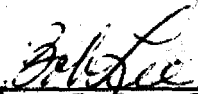
Senator Olson then questioned the wording of "unreasonable length of time". Representative Stoltz replied that this should be decided by the patient and doctor.

At this point Senator Blaylock stated his desire to have Fred Barrett appear at the next meeting before discussing this further.

DISPOSITION OF HOUSE BILL NO. 39: Senator Mehrens moved that House Bill 39 BE CONCURRED IN. Motion carried unanimously with Senator Etchart excused.

ADJOURN:

There being no further business, the meeting was adjourned at 10:45 a.m.



Robert E. Lee, Chairman

MEMORANDUM

A BILL AMENDING SECTION 92-715, R.C.M. 1947, BY REMOVING THE 2% DISCOUNT ON LUMP SUM PAYMENTS UNDER THE WORKMEN'S COMPENSATION ACT

House Bill 39 would amend Section 92-715, R.C.M. 1947, by eliminating a 2% present worth adjustment on lump sum payments. Section 92-715 allows the Division of Workmen's Compensation to grant lump sum payments. Thus, an individual who may have a certain sum of compensation due him can request that that amount of compensation be converted into a lump sum payment. Such a conversion must be approved by the Division. In certain instances, the Division will allow such conversions if the injured worker can illustrate a need for the conversion. If a conversion of future biweekly payments is granted, the law grants to the insurer a present worth adjustment.

The 2% discount was placed in the law in order to give the insurer a certain benefit in that if the insurer were to pay out the award biweekly instead of in a lump sum, the insurer would have the amount of the award for a period of time for investment purposes, etc.

Throughout the history of the Workmen's Compensation Act, the 2% discount has been used very little. However, the recent Legislative Audit Report of the Division of Workmen's Compensation recommended that the Division apply the 2% discount to all lump sum payments as required under Section 92-715. The Administrator of the Division instructed the State Insurance Fund to begin taking the 2% discount in appropriate cases in accordance with the Legislative Auditor's recommendation. Also, on April 26, 1974, the Montana Supreme Court in the case of Kuehn v. National Farmers Union Property and Casualty Co., 31 St. Rep. 3 held that the Division erred in not applying the 2% discount in a contested case when it ordered a partial lump sum advance payment to a claimant. The Division has, therefore, applied the 2% discount in State Insurance Fund settlements and in contested case matters when the Division orders partial advance payments.

It should be noted that the 2% discount does not apply to lump sum payments that relate to accumulated compensation. It only applies to settlements involving the conversion of future biweekly compensation payments into a lump sum. The Division has found that most selfinsurers and private insurance companies waive the 2% discount in the settlement of cases. However, the Division has taken the position that the State Insurance Fund should not waive the 2% discount because of the recommendations of the Legislative Auditor. The calculation of the discount is somewhat of an administrative burden, and the time spent by Division employees in calculating the discount could be utilized more effectively in other areas.

The discount has actually very little financial effect on an insurer, but it could have a considerable financial impact on an injured claimant who is in desperate need of financial assistance for his family and himself. The removal of the discount will have very little or no effect on employers premium rates. The present application of the discount does discriminate against employees under Plan 3 in that in most Plan 1 and 2 cases, the selfinsurer or the private insurer waives the discount in favor of the employee.

It is, therefore, recommended that the discount be deleted. ~~_____~~

STANDING COMMITTEE REPORT

February 3, 1975

MR. PRESIDENT

We, your committee on Labor and Employment Relations

having had under consideration House Bill No. 39

Respectfully report as follows: That House Bill No. 39

DOES

BE CONCERNED IN

who hires more female workers. Question was called. MOTION FAILED WITH FEDERICO, BABCOCK, ELLERD, ELLIS, GUTHRIE, MCFADDEN AND SIVERSEN IN FAVOR AND BAETH, DASSINGER, GILLIGAN, JOHNSON, KELLY, MAGONE, AND TRAVIS OPPOSED.

REP. BAETH MOVED HB 9 DO PASS AS AMENDED. SECONDED BY REP. TRAVIS. Rep. Sivertsen said that you have to take into consideration the cost to the employer. He said that a pregnancy is not a sickness, and should not be termed as a disability. Rep- Ellerd said that any employer would tend to discriminate against a women, and hire a male employee. Rep. Travis in reply said that the Civil Rights Act of 1964 should take care of this type of act. MOTION CARRIED WITH REPS. FEDERICO, BAETH DASSINGER, ~~BAETH~~, GILLIGAN, JOHNSON, KELLY, MAGONE & TRAVIS IN FAVOR, AND REPS. BABCOCK, ELLERD, ELLIS, GUTHRIE, MCFADDEN & SIVERTSE OPPOSED.

HB #38--REP. FEDERICO MOVED TO AMEND PAGE 2, SECTION 4, SS (1), LINES 11-13, BY STRIKING THIS, AND INSERTING "IN ASSURING THAT THE RIGHT OF INDIVIDUAL PRIVACY SO ESSENTIAL TO THE WELL-BEING OF A FREE SOCIETY SHALL NOT BE INFRINGED W/O THE SHOWING OF A COMPELLING STATE INTEREST, THE FOLLOWING PUBLIC RECORDS OF THE DIVISION ARE EXEMPT FROM DISCLOSURE:" MCFADDEN SECONDED. MOTION CARRIED UNANIMOUSLY.

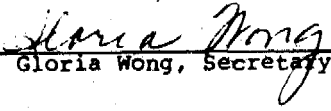
REP. TRAVIS MOVED HB 38 DO PASS AS AMENDED, SECONDED BY REP. FEDERICO. MOTION CARRIED UNANIMOUSLY.

HB #39--REP. BAETH MOVED AN AMEND TO MAKE THIS BILL EFFECTIVE UPON PASSAGE, SECONDED BY REP. FEDERICO. MOTION CARRIED UNANIMOUSLY.

REP. FEDERICO MOVED HB 39 AS AMENDED DO PASS, SECONDED BY REP. MAGONE. MOTION CARRIED UNANIMOUSLY.

Nofurther business, the meeting was adjourned to reconvene January 22, at 10:30 a.m. in the Governor's Reception Room.

GARY N. KIMBLE, Chairman


Gloria Wong, Secretary

MEMORANDUM

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The 2% discount was placed in the law in order to give the insurer a certain benefit in that if the insurer were to pay out the award biweekly instead of in a lump sum, the insurer would have the amount of the award for a period of time for investment purposes, etc.

Throughout the history of the Workmen's Compensation Act, the 2% discount has been used very little. However, the recent Legislative Audit Report of the Division of Workmen's Compensation recommended that the Division apply the 2% discount to all lump sum payments as required under Section 92-715. The Administrator of the Division instructed the State Insurance Fund to begin taking the 2% discount in appropriate cases in accordance with the Legislative Auditor's recommendation. Also, on April 26, 1974, the Montana Supreme Court in the case of Kuehn v. National Farmers Union Property and Casualty Co., 31 St. Rep. 375, held that the Division erred in not applying the 2% discount in a contested case when it ordered a partial lump sum advance payment to a claimant. The Division has, therefore, applied the 2% discount in State Insurance Fund settlements and in contested case matters when the Division orders partial advance payments.

It should be noted that the 2% discount does not apply to lump sum payments that relate to accumulated compensation. It only applies to settlements involving the conversion of future biweekly compensation payments into a lump sum. The Division has found that most selfinsurers and private insurance companies waive the 2% discount in the settlement of cases. However, the Division has taken the position that the State Insurance Fund should not waive the 2% discount because of the recommendations of the Legislative Auditor. The calculation of the discount is somewhat of an administrative burden, and the time spent by Division employees in calculating the discount could be utilized more effectively in other areas.

The discount has actually very little financial effect on an insurer, but it could have a considerable financial impact on an injured claimant who is in desperate need of financial assistance for his family and himself. The removal of the discount will have very little or no effect on employers premium rates. The present application of the discount does discriminate against employees under Plan 3 in that in most Plan 1 and 2 cases, the selfinsurer or the private insurer waives the discount in favor of the employee.

It is, therefore, recommended that the discount be deleted. It is also recommended that House Bill 39 be given an immediate effective date.

HOUSE BILL NO. 39

INTRODUCED BY MULAR, MELOY, QUILICI, HARPER, MCKITTRICK,
KIMBLE, MENAHAN, KELLY, BRAND, DRISCOLL, LUEBECK, KENDALL,
MURPHY, W. BAETH, CONROY, LESTER, SLOAN, HAGEMAN, MOORE,
MAGONE, KANDUCH, JOHNSTON, LYNCH, GILLIGAN, FISHBAUGH

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
92-715, R.C.M. 1947, TO REMOVE THE TWO PERCENT (2%) DISCOUNT
ON LUMP SUM SETTLEMENTS IN WORKMEN'S COMPENSATION CASES;
AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 92-715, R.C.M. 1947, is amended to
read as follows:

"92-715. Biweekly payments converted into a lump sum.
The biweekly payments provided for in this act may be
converted, in whole or in part, into a lump-sum payment,
~~which-lump-sum-payment-shall-not-exceed-the-estimated--value~~
~~of-the-present-worth-of-the-deferred-payments-capitalized-at~~
~~the--rate-of-two-per-centum-(2%)-per-annum.~~ Such conversion
can only be made upon the written application of the injured
workman, his beneficiary, or major or minor dependents, as
the case may be, and shall rest in the discretion of the
~~board~~ division, both as to the amount of such lump-sum
payment and the advisability of such conversion. The ~~board~~

division is hereby vested with full power, authority, and
jurisdiction to compromise claims and to approve compromises
of claims under this act; and all settlements and
compromises of compensation provided in this act shall be
absolutely null and void without the approval of the ~~board~~
division. Any approval of the ~~board~~ division must be in
writing and set forth specifically the reasons for such
lump-sum or compromise payment."

SECTION 2. THIS ACT IS EFFECTIVE ON ITS PASSAGE AND
APPROVAL.

-End-